IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 11148 of 1998

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

PRAVIN RAVISHANKAR JOSHI & ORS.
VERSUS
COMMISSIONER, BHAVNAGAR MAHANAGAR PALIKA

Appearance:
MR YN RAVANI for the Petitioners
MR HS MUNSHAW for Respondent No.1
MR VM PANCHOLI for Respondent No.2

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 12/06/2000

C.A.V. JUDGMENT

1. Prayer has been made by the petitioners, in all

17 in number, for direction in the nature of mandamus directing the respondents to frame appropriate scheme regarding the cabin, lorries and gallas situated in the city of Bhavnagar for allotment of alternative places and further be pleased to direct the respondents, their servants, agents and assignees not to remove the cabins, lorries and gallas situated at Ghogha Jakatnaka Chhapari, situated near. St. Mary School at Bhavnagar. Prayer has also been made for grant of interim relief.

2. Learned counsel for the petitioners contended that the respondents are not entitled to remove the cabins of the petitioners without issuing notice and/or affording an opportunity of personal hearing to them. It has next been contended that the petitioners cannot be evicted from the place in dispute without following the procedure laid down in the Public Premises (Eviction of Unauthorised Occupants) Act, 1972. It has next been contended that the action of the respondents to remove the petitioners from the site is not in public interest. They are there for last many years. Their existence there does not cause any hindrance to public or traffic hazards. Even their existence at the site is not causing any hindrance or any obstruction or disturbance to school. Lastly it is contended that unless any scheme is famed for allotting alternative accommodation to the petitioners, this action of the respondents is wholly arbitrary and unjustified.

3. Shri H.S. Munshaw, learned counsel for the respondent Bhavnagar Mahanagar palika contended that the petitioners are ranked trespassers on the Government land and they are there in recent point of time and they have no right to continue there. As they are ranked trespassers on the Government land, no notice whatsoever or opportunity of hearing is required to be afforded to them. The provisions of the Act, reference of which has been made by the learned counsel for the petitioners during the course of arguments, are also not attracted in the present case. In his submission, it is not obligatory on the part of the respondent No.1 to give alternate site to the petitioners. If it is done, then for every encroacher, ranked trespassers etc. alternative site has to be given, which is not the law nor it is need of the time. It may amount to giving premium to these persons who are illegally occupying the Government land. In his submissions, the petitioners are on the pavements and their possession cannot be protected. Lastly, it is contended that at no point of time, Mahanagar palika has agreed to give alternative site to the petitioners. It is true what he contends

that the Minister has written a letter and the Chairman has also written a letter but the Mahanagarpalika has not resolved to give any alternative site to the petitioners. Summoning up his contention, Shri Munshaw submitted that this writ petition is wholly misconceived. The petitioners earlier filed a civil suit in the matter in the court of Civil Judge (S.D.), Bhavnagar and that suit is still pending. In the suit, they made a prayer for grant of interim relief in their favour but Ex.5 came to be rejected. Then the matter was taken up in appeal and appeal was also dismissed. Then this matter was carried to this court in civil revision application and that has also been dismissed. Shri Munshaw submits that the petitioners have deliberately not mentioned all these facts. The petitioners felt satisfied to mention only the fact that the suit has been filed but they have not mentioned all these facts that in the suit they have not been protected by grant of interim relief.

4. Shri Pancholi, supported the arguments advanced by Shri Munshaw.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

6. In the writ petition, it is nowhere mentioned that since when these petitioners are occupying this public place in dispute. It is not the case of the petitioners that they are lawfully occupying the land in dispute. It is also not disputed by the petitioners that it is a public place i.e. the land belongs to the Govt. or the Mahanagarpalika and it is adjacent to the road. For all these reasons, it is a clear case of trespass on the Government/Mahanagar Palika road by the petitioners. Their existence there is only as a ranked trespassers. It is true that to some extent the officers of the Mahanagar Palika are also responsible for this encroachment. Why they have permitted this encroachment, has not been given out. It is also not given out why these officers of the Mahanagarpalika are not keeping dog watch on public places so that nobody may make any encroachment. But merely because it is not objected at one point of time by the officers of the Mahanagarpalika, no right whatsoever much less a legal right is being accrued to the petitioners to continue their cabins/lorries/gallas at this site in dispute. In case the officers of the Mahanagarpalika who have been paid handsome salaries and who owe duty to public also, if they discharge their duties honestly, faithfully and diligently and without any favour, then certainly these

encroachments which are coming up on the roads or other public places would not have been there. Though there is no evidence on the record but I have no hesitation to say that without connivance of the officers of the Mahanagarpalika there is no question of any encroachment or trespassing on the public roads, pavements or public places. This is possible only with the help of these officers. They permit the same to continue for years together and when Mahanagarpalika thinks to remove these trespassers, they approach to the courts for protection of their possession etc. and in many of the cases, no doubt, the courts are also protecting them. The law is well settled that ranked trespassers cannot be given protection by this court under its extraordinary equitable jurisdiction. It is not necessary in all the cases where the court has to give direction for framing of the schemes, i.e. for rehabilitation of these persons who are ranked trespassers. The cases on which reliance has been placed by the petitioners in the memo of writ petition are clearly distinguishable.

7. It is not correct to say on the part of the petitioners that the Standing Committee of the Bhavnagar Municipal Corporation resolved to give alternate place to the petitioners on 6th November, 1998. The document, annexure `B' which is stated to be the resolution of the Standing Committee is not correct. The document annexure `B' which is on record is the letter of the Chairman of the Standing Committee and not a resolution. This letter reads as under:

Bhavnagar Municipal Corporation
B.V. No. 068192
Standing Committee Chairman Inward No.513.

Dated 6-11-1998

To
The Commissioner,
Mahanagarpalika,
Bhavnagar,

With reference to the representation made by the Ghogha Jakatnaka Lari Galla Association regarding allotment of the shops, Shri Mahipatsinh V. Gohil, the Chairman of the Standing Committee had sent to you the application with their names and address vide Standing Committee Chairman Inward No.243 dated 10-7-97, however, it seems that nothing has been done in that regard so far. In this connection, the Honourable Minister Shri Mahendrabhai Trivedi has address a communication to me,

asking to send him the detailed progress. Therefore, you are requested to do the needful in this regard and also send the detailed report in relation thereto.

Enclosed is the recommendation letter of the Honourable Minister.

sd/- Illegible,
Chairman,
Standing Committee,
Mahanagar Palika,
Bhavnagar.

8. On reading of this letter, I find that some representation has been made by these petitioners regarding allotment of the shops. The Chairman of the Standing Committee sent the application of the petitioners to the Commissioner, Bhavnagar Mahanagarpalika. The Honourable Minister Shri Mahendrabhai Trivedi also addressed a communication to the Chairman of the Standing Committee in this connection. This is only a letter of the Chairman of the Standing Committee and not the resolution. In the absence of any resolution, otherwise also, no such contention as raised in the special civil application can be accepted.

9. The possession of the petitioners on the site in question is as a ranked trespasser and it cannot be protected by this court under its extraordinary jurisdiction under Article 226 of the Constitution. Otherwise also, looking to the nature of this case, the petitioners have failed to make out any case for directions by this Court to the respondents to give them alternative site.

10. There is yet another ground on which this petition deserves to be dismissed. The petitioners cannot be allowed to avail of simultaneously two parallel remedies in respect of the same grievance. Merely by stating that the subject matter of the suit and this petition is not the same cannot be accepted. If we go by the pleading made by the petitioner in para-8 of the special civil application, I am satisfied or it can be assumed, presumed and accepted that the subject matter of the suit and this petition is identical. If it would not have been correct then there would not have been any occasion for the petitioners to state that they are ready to withdraw the suit if this petition is entertained. This very prayer made goes to show that identical cause of action is there in the suit

and the petition.

11. I find sufficient merits in the contention of Shri Munshaw that the petitioners have concealed the material facts from this court. Concealment of material facts from the court by the petitioners who seek relief from this court under its extraordinary equitable jurisdiction is very relevant and material and this conduct itself is sufficient for the dismissal of this special civil application. True that the petitioners have stated that the suit has been filed but the petitioners have deliberately concealed very important facts from this court that in the suit Ex.5 has been filed which has been rejected by the trial court and appeal filed against that order, has also been dismissed and finally the civil revision application filed in this court too has been dismissed. These all are very relevant and material facts which are to be disclosed by the petitioners in the special civil application. By not disclosing these facts the petitioner is able to get the order of notice to the other side and ultimately an interim injunction has been granted in their favour. There are the relevant and material facts and possibly in case the same would have been stated, this court would not have entertained this petition. Not only this, the petitioners should have filed the copies of the order which have been passed below Ex.5, appeal and civil revision application.

12. Taking into consideration the totality of the facts of this case, no relief whatsoever as prayed in this petition can be granted to the petitioners.

13. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief granted earlier stands vacated. The petitioners are directed to pay Rs.2000/= as costs of this petition to the respondent No.1 and Rs.500/= as costs of this petition to the respondent No.2.

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zgs/-